

Date Mailed November 3, 1998

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Administrative Rules Regarding Various Dispute
Resolution Procedures Under Federal and State Law

1-AC-181

NOTICE OF HEARING

Public Hearing: December 8, 1998 - 9:00 a.m. Amnicon Falls Hearing Room Public Service Commission 610 North Whitney Way Madison, WI 53705	Address Comments To: Lynda L. Dorr, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854 Fax No: (608) 266-3957
Written Comments (if desired) Due: January 11, 1999, by Noon	
FAX Comments Due: January 8, 1999, by Noon	

The Public Service Commission of Wisconsin (Commission) proposes an order to create ch. PSC 179, relating to whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02(1) and (3), 196.199(2), and 227.11(2), Stats.
Statutes interpreted: ss. 196.199(3) and 196.26(1)(a)3., Stats.

The federal Telecommunications Act of 1996 (Act) and 1993 Wisconsin Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors which allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and

responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act.

Courts have held and s. 196.199(2)(a), Stats., created by 1997 Wisconsin Act 218, effective January 1, 1999, provides that the state also has the right to enforce existing agreements. As part of its enforcement power, the Commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement. The 1997 Wisconsin Act 218 establishes a procedure for the expedited investigation of complaints about a party's failure to comply with an interconnection agreement when the alleged failure has a significant adverse effect on the other party's ability to provide telecommunications service to its customers.

Section 196.199(2)(c), Stats., requires that the Commission promulgate rules specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the complaining party's ability to provide telecommunications services to its customers. This rule specifies the minimum factors which the Commission must consider when determining whether there is a significant adverse effect which justifies an expedited investigation. These factors include:

- ?? The ability of customers or potential customers to obtain or continue to receive uninterrupted telecommunications service from the provider of his/her choice;
- ?? Whether and to what degree any loss or damage due to an alleged failure to comply with the agreement can be remedied without an expedited proceeding under s. 196.199, Stats. This factor recognizes that there may be times when, for example, no amount of money can remedy the damage and times when, even if money can remedy the damage, only an expedited process can result in the remedy's being available soon enough;
- ?? Whether either party is put in a better or worse business or financial position as a result of the failure to comply with the agreement; and
- ?? The effect on competition.

Other statutory provisions require or allow the Commission to develop administrative rules concerning alternate dispute resolution and other issues involved in the enforcement of interconnection agreements. A later rule packet rule will address these remaining, broader areas of disputes between providers and alternate dispute resolution.

TEXT OF PROPOSED RULE

The text of the proposed rules is set forth as Attachment A hereto.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

This rule may have an effect on small telecommunications utilities, which are small businesses under s. 196.216, Stats., for the purposes of s. 227.114, Stats. These small telecommunications utilities, of which there are 79 in Wisconsin, like other telecommunications providers (both large and small), may be parties to interconnection agreements about which dispute arise.

The statute implemented by this rule provides an expedited process for resolving such disputes where “significant adverse effect” is alleged. The statute does not allow for different treatment of small telecommunications utilities. This rule outlines the factors the Commission will consider in determining whether “significant adverse effect” exists.

Any adverse impact on small telecommunications utilities is expected to be minimal. In fact, this rule and the statute it implements were intended to expedite the resolution of disputes and therefore will benefit small telecommunications utilities involved in such disputes.

The agency has considered the methods in s. 227.114(2), Stats., for reducing the impact of the rules on small businesses. However, this rule does not impose any new compliance requirements or any new reporting, bookkeeping, or other procedural compliance requirements. Therefore, the impact reduction methods are not really applicable.

FISCAL ESTIMATE

These rules have no fiscal impact independent of that of the legislation which mandates them. A completed Fiscal Estimate form is included as Attachment B.

ENVIRONMENTAL ANALYSIS

This is a Type III action under s. PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission’s attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

EFFECTIVE DATE

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Commission will hold a public hearing for the purpose of obtaining comments from interested parties on the proposed rules. The hearing will be held according to the following schedule:

December 8, 1998, at 9:00 a.m., in the Amnicon Falls Hearing Room (Room 1300) at the Public Service Commission Building, 610 North Whitney Way, Madison, Wisconsin. The examiner may continue the hearing at such times and places as necessary to complete the hearing.

NOTICE IS FURTHER GIVEN that the building at 610 North Whitney Way is accessible to people in wheelchairs through the main floor entrance (Lobby) on the Whitney Way side of the building. Handicapped parking is available on the south side of the building and the building has some wheelchair accessible rest rooms. Any party with a disability who needs additional accommodations should contact Nick Linden at (608) 266-8950.

WRITTEN COMMENTS

NOTICE IS FURTHER GIVEN that any person may submit written comments on the proposed rule. The hearing record will be open for written comments from the public effective immediately, until **January 11, 1999, at noon (January 8, 1999, at noon, if filed by fax).**

All written comments on the rule must include a reference on the filing to docket 1-AC-181 and be addressed to Lynda Dorr, Secretary to the Commission.

If filing by mail, courier or hand delivery: Address comments to Lynda Dorr, Secretary to the Commission, Public Service Commission, 610 North Whitney Way, P.O. Box 7854, Madison, WI, 53707-7854. Industry parties should submit an original and 20 copies. Members of the general public need only file an original. File by **January 11, 1999, at noon.**

If filing by fax: Send fax comments to (608) 266-3957. Address comments to Lynda Dorr, Secretary to the Commission. Fax filing cover sheets **MUST** state “**Official Filing,**” the docket number (1-AC-181), and the number of pages (limited to 20 pages for fax comments). File faxes by **January 8, 1999, at noon.**

File by one mode only.

Docket 1-AC-181

Questions regarding the hearing may be directed to Examiner Jeffry J. Patzke at (608) 266-7165. Other questions on this matter should be directed to Nick Linden, Assistant Administrator, Telecommunications Division, at (608) 266-8950.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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Attachments

cc: Records Management
 Lynda Dorr, Secretary to the Commission
 RM Mail

SECTION 1. Chapter PSC 179 is created to read:

Chapter PSC 179

TELECOMMUNICATIONS DISPUTE RESOLUTION

PSC 179.01	Purpose.	PSC 179.03	Significant adverse effect.
PSC 179.02	Definitions.		

PSC 179.01 Purpose. Chapter PSC 179 implements s. 196.199(2)(c), Stats., which requires the commission to specify by rule the requirements for determining in certain cases whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers.

PSC 179.02 Definitions. In this chapter:

- (1) "Commission" means the public service commission.
- (2) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, telecommunications provider, governmental agency, or other entity which is provided with retail or wholesale telecommunications service, or both, by a party to an interconnection agreement. "Customer" does not include a party.
- (3) "Essential telecommunications services" has the meaning given in s. PSC 160.03.
- (4) "Interconnection agreement" means an agreement that is subject to approval by the commission under 47 USC 252(e), except that it does not include an agreement to which a commercial mobile radio service provider, as defined in s. 196.01(2g), Stats., is a party.
- (5) "Party" means a signatory to a particular interconnection agreement.
- (6) "Telecommunications provider" means any person who provides telecommunications service.
- (7) "Telecommunications service" has the meaning given in s. 196.01(9m), Stats.

PSC 179.03 Significant adverse effect. In determining if a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers-under ss. 196.199(3)(a) and 196.26(1)(a)3., Stats., the commission shall consider at least the following factors:

- (1) The ability of a customer or potential customer to obtain or continue to receive uninterrupted telecommunications service, especially essential telecommunications services, from the telecommunications provider of that customer's choice;

Attachment A

(2) Whether and to what degree any loss or damage to an allegedly aggrieved party or its customer or potential customer resulting from the alleged failure to comply with an interconnection agreement can be remedied without an expedited proceeding under s. 196.199, Stats.; and

(3) Whether and to what degree the alleged failure to comply with an interconnection agreement:

(a) Frustrates or enhances the planning or execution of a party's business plan, marketing effort, or service or product introduction, or any combination thereof;

(b) Causes or threatens to cause a delay in or barrier to a party's market entry or a delay in the growth of its market share, or both;

(c) Damages or threatens to damage the reputation of a party;

(d) Damages or threatens to damage the ability of a party to effectively compete;

(e) Harms or threatens to harm the financial health of a party; or

(f) Favors a party's obtaining or retaining of customers, or both.

SECTION 2. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

1997 Session LRB or Bill No./Adm. Rule No. 1-AC-181 Amendment No. if Applicable	
FISCAL ESTIMATE DOA-2048 N(R10/96)	<div style="display: flex; justify-content: space-between;"> <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED </div> <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL </div>
Subject Rules pursuant to ss. 196.199(2)(a) and (c), Stats. Specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect	
Fiscal Effect <div style="display: flex;"> <div style="flex: 1;"> State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation </div> <div style="width: 50%;"> <input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs </div> </div> </div> <div style="flex: 1; margin-left: 10px;"> Local: <input type="checkbox"/> No local government costs <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 30%;"> 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div style="width: 30%;"> 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory </div> <div style="width: 35%;"> 5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts </div> </div> </div> </div>	
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations 20.155(l)(g)
Assumptions Used in Arriving at Fiscal Estimate <p>The federal Telecommunications Act of 1996 (Act) and 1993 Wisconsin Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors which allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act.</p> <p>Courts have held and s. 196.199(2)(a), Stats., effective January 1, 1999, provides that the state also has the right to enforce existing agreements. As part of its enforcement power, the Commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement. 1997 Wisconsin Act 218 established a procedure for the expedited investigation of complaints about a party's failure to comply with an interconnection agreement when the alleged failure has a significant adverse effect on the other party's ability to provide telecommunications service to its customers.</p> <p>Section 196.199(2)(c), Stats., requires that the Commission promulgate rules specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the complaining party's ability to provide telecommunications services to its customers. This rule specifies the minimum factors which the Commission must consider when determining whether there is a significant adverse effect which justifies an expedited investigation</p> <p>Other statutory provisions require or allow the Commission to develop administrative rules concerning alternate dispute resolution and other issues involved in the enforcement of interconnection agreements. A later rule will address these remaining, broader areas of disputes between providers and alternate dispute resolution.</p> <p>The Commission has already received and expects to continue to receive complaints and petitions to resolve disputes under Interconnection agreements. There is no way to quantify with any accuracy how much work will result from enforcement of Agreements. Therefore, the PSC intends to absorb the workload created as a result of this administrative rule, just as the Commission stated in its prior fiscal estimate relating to the statutory changes.</p>	
Long-Range Fiscal Implications None.	

Attachment B

Agency/Prepared by: (Name & Phone No.) PSC/Nick Linden 266-8950	Authorized Signature/Telephone No.	Date 10/21/98
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